

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

J. J.R. DISTRIBUTING CORPORATION, D/B/A)
DISILVA FRUIT, ET AL,)
Plaintiffs,)
v.) Civil Action No. 09-cv-210-P-S
SANDLER BROS., ET AL,)
Defendants.)

ORDER ON PLAINTIFFS' MOTION FOR ENTRY OF DEFAULT JUDGMENT
AND DAMAGES AGAINST DEFENDANT SANDLER BROS.

Defendants, Sandler Bros. having failed to plead or otherwise defendant in this action and its default having been entered; and now, upon application of Plaintiffs J.J.R. Distributing Corporation d/b/a DiSilva Fruit, Community-Suffolk, Inc., Forlizzi & Bimber, Inc., Boston Tomato & Packaging, LLC., Eaton & Eustis Company, The Alphas Company, Inc., Garden Fresh Salad Co., Inc., Gregg Dziama, Inc., J. Bonafede Co., Inc., Grant Stanton Produce Company, Inc., State Garden, Inc., Tropical Banana Company, Inc., Waldo H. Lailer & Company, Inc. and the affidavits and other submissions of Plaintiffs demonstrating that each is entitled to judgment, the following findings and order are made:

1. This Action was commenced on May 27, 2009 (1) recover payment for perishable agricultural commodities (“Produce”) sold and delivered by Plaintiffs to Sandler Bros., (2) impose liability upon all Defendants for violation of their obligation to maintain the trust arising under the Perishable Agricultural Commodities Act, 7 U.S.C. §499e(c)(the “PACA Trust”). This Court entered a default against Defendant Sandler Brothers Company (“Sandler Bros.”) in favor of Plaintiffs on August 18, 2009, pursuant to Plaintiff’s Motion for Entry of Default (Docket # 54) and F.R.Civ.P. 55(a)(Docket No. 56)(“Default Order”).
2. Each of the Plaintiffs and Sandler Bros. is a licensed dealer seller at wholesaler under the Perishable Agricultural Commodities Act, 7 U.S.C. §499a, et seq.
3. Sandler Bros. and the responsibly connected individuals under PACA have a fiduciary obligation to ensure that the assets of the PACA Trust, are timely paid over to the beneficiaries of the Trust. 7 C.F.R. §§ 46.2, 46.46.
4. As a licensed dealer, each of the Plaintiffs became a beneficiary of the PACA Trust upon delivery of each lot of produce to Sandler Bros.

5. Each of the Plaintiffs has preserved its rights as a PACA Trust beneficiary by including the notice specified by the Secretary of Agriculture on each of the invoices tendered to Fresh Foods, Inc. in the ordinary course of business, 7 C.F.R. §46.46(f)(3).
6. Sandler Bros. failed to make full payment promptly of the amounts due to each of the Plaintiffs as set forth on the accounts annexed to the Complaint, the Judgment previously entered in Civil Action No. 2:08-CV-99-P-S and as established by the Affidavits submitted by each of the Plaintiffs. The balance due to each of the Plaintiffs, exclusive of attorneys' fees and collection costs is as follows:
 - a. DiSilva – the sum of 25,329.36, plus interest at the rate of 18% per year from the due date of each invoice.
 - b. Community – the sum of \$49,174.67, plus interest at the rate of 12% per year from the due date of each invoice.
 - c. Forlizzi – the sum of \$36,250.77, plus interest at the rate of 12% per year from the due date of each invoice.
 - d. Boston Tomato – the sum of \$60,318.34, plus interest at the rate of 12% per year from the due date of each invoice.
 - e. Eaton & Eustis – the sum of \$3,749.70, plus interest at the rate of 12% per year from the due date of each invoice.
 - f. Alphas – the sum of \$2,736.77, plus interest at the rate of 18% per year from the due date of each invoice.
 - g. Garden Fresh – the sum of \$16,759.77, plus interest at the rate of 18% from the due date of each invoice.
 - h. Dziama – the sum of \$83,369.81, plus interest at the rate of 12% from the due date of each invoice.
 - i. Bonafede – the sum of \$14,535.91, plus interest at the rate of 12% from the due date of each invoice.
 - j. Grant Stanton – for the sum of \$6,977.89, plus interest at the rate of 18% per year commencing November 1, 2009.
 - k. Tropical – for the sum of \$11,548.63, plus interest at the rate of 12% per year commencing November 1, 2009.
 - l. State Garden – for the sum of \$10,447.11, plus interest at the rate of 12% per year commencing November 1, 2009.

m. W. H. Lailer – for the sum of \$32,111.20, plus interest at the rate of 18% per year commencing November 1, 2009.

7. Plaintiffs, to recover reasonable attorney's fees and costs, shall file supporting documentation within ten (10) days of the date of this Order.

/s/ George Z. Singal
United States District Judge

Dated: December 30, 2009